

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.8715/2018

Maya Kishore Jamunh (Thakur)
Age : 56 years. Occ.: Housewife,
R/o. Behind Sindhi High School,
Kailesh Tekdi, Akola-444 001.

...PETITIONER

...VERSUS...

- 1] The State of Maharashtra through **RESPONDENTS**
the Secretary Urban Development Department,
Mantralaya, Mumbai-32.
- 2] The Director of Town Planning,
State of Maharashtra, Central Building,
Pune-1.
- 3] The Municipal Corporation, Akola
through its Commissioner at Akola
O/o Municipal Corporation Akola,
Tq. Akola, District Akola.
- 4] Town Planner Akola,
Municipal Corporation, Akola,
O/o Municipal Corporation, Akola,
Tq. Akola, District Akola.
- 5] The Collector, Akola, through its
Special Land Acquisition Officer, Collector Office,
Akola, Collector Office, Akola-444001.

Shri G.K.Mundhada, Advocate for petitioner.
Shri N.R.Patil, Assistant Government Pleader for respondent Nos. 1, 2 and 5.
Shri S.V.Sohoni, Advocate for respondent no.3.

CORAM : A.S.CHANDURKAR and G.A.SANAP, JJ.
DATED : 22nd December, 2021

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner is the owner of land at Survey No.12/1 Village Kaulkhed, Taluka and District Akola, which admeasures 1 H 41 R in the development plan of the City of Akola that was sanctioned on 31.12.1992. The same came into force on 01.03.1993. The land owned by the petitioner was shown as reserved for Government Administrative purposes vide Reservation No.94. The petitioner therefore was prevented from using the said land for residential purpose. After expiry of the period of more than ten years as no steps were taken for acquisition of the said land, a joint notice under Sections 49 and 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the Act of 1966') was issued on 03.05.2017. This notice was duly served at the Municipal Corporation through its Commissioner, Town Planer, Akola as well as the Collector, Akola. That notice was also sent to the Secretary, Urban Development Department as well as the Director, Town Planning, Pune. Thereafter on 15.06.2017 the petitioner was heard pursuant to the notice

under Section 49 of the Act of 1966. On 07.11.2017 the notice issued under Section 49 was confirmed under the provisions of Section 49(4) of the Act of 1966 and the Collector was directed to take necessary steps within a period of one year for acquisition of that land. On noticing that despite lapse of period of one year no steps were taken, according to the petitioner the deeming fiction under Section 49(7) of the Act of 1966 started operating. The petitioner filed the present writ petition on 21.12.2018 seeking a direction against the Collector to deposit 30% of the amount of compensation in the Government Treasury as per Government Resolution dated 01.08.2016 for the purposes of acquisition. Period of 24 months after issuance of purchase notice under Section 127 of the Act of 1966 expired on 07.05.2019 during the pendency of the writ petition. After expiry of period of 24 months from the issuance of the purchase notice, the writ petition was amended and a declaration that Reservation No.94 had lapsed has been sought.

3. It is in the aforesaid backdrop the learned counsel for the parties have been heard.

4. Shri G.K.Mundhada, learned counsel for the petitioner submits that in view of provisions of Section 49(7) of the Act of 1966 since the period of more than one year had lapsed from the date of confirmation of notice given under Section 49 of the Act of 1966, the land in question was deemed to be released

from the reservation. Further on the expiry of period of 24 months from the service of purchase notice as no steps for acquisition of that land were taken, the reservation stood lapsed. It was permissible for the land owner to issue composite notice under Sections 49 and 127 of the Act of 1966. This position was clear in view of the judgment of the Division Bench in ***Hasina Kudbuddin Shaikh and ors. vs. Karad Municipal Council and ors. 2019 (1) Mh.L.J. 126.*** He therefore submitted that since all requisite compliances had been made by the petitioner and no steps were taken for acquiring the land in question, the petitioner was entitled for a declaration that Reservation No.94 had lapsed.

5. Shri N.R.Patil, learned Assistant Government Pleader for respondent nos. 1, 2 and 5 as well as Shri S. V. Sohoni, learned counsel for the respondent no.3 opposed the aforesaid submissions. It was submitted by the learned counsel for the respondent no.3 that since notice dated 03.05.2017 was not issued by the land owner but by his counsel, the same was not valid. Further by only supplying the copy of 7/12 extracts without any document of title, the requirements of Section 127 were not satisfied. It was thus submitted that the petitioner was not entitled for any relief whatsoever. Shri S.V.Sohoni, learned counsel for the respondent no.3 sought to place reliance on the decision in ***Perfect Machine Tools Co. Ltd. vs. State of Maharashtra and ors. 2008 (2) Mh.L.J. 404*** in that regard.

In response to the aforesaid the learned counsel for the petitioner submitted that issuance of purchase notice by counsel was permissible. He submitted that the decision relied upon by the learned counsel for the respondent no.3 had been overruled by the Hon'ble Supreme Court in *Perfect Machine Tools Company Limited vs. State of Maharashtra and ors. (2017) 16 SCC 482*. Further in *Abdul Gani N Wadwan vs. State of Maharashtra and ors. 2018 (4) Mh L.J. 454*, it was held that entries in 7/12 extracts were sufficient to hold that the person named therein had interested in the land in question. Hence the grounds urged by the respondents had no merit.

6. We have given due consideration to the rival submissions and we have perused the material on record. The undisputed facts on record indicate that the composite notice dated 03.05.2017 issued under Sections 49 and 127 of the Act of 1966 was served on all concerned parties by 08.05.2017. Pursuant thereto the State Government heard the petitioner in the matter of confirmation of the notice under Section 49 and passed an order on 07.11.2017 by confirming the purchase notice under Section 49(4) of the Act of 1966. It is further clear that the period of one year as contemplated by Section 49(7) and the period of 24 months as contemplated by Section 127 of the Act of 1966 has passed. As a result the deeming fiction under Section 49(7) of the Act of 1966 would operate. Similar is the position with regard to Section 127 of the Act of 1966. In *Hasina Kudbuddin Shaikh and ors. (supra)*

the Division Bench of this Court has held that it was permissible for a land owner to issue composite notice under Sections 49 and 127 of the Act of 1966. Thereafter in *Abdul Gani* (supra) it has been held by the Division Bench that furnishing of relevant revenue records in the form of 7/12 extracts was sufficient to indicate the interest of the person in the land mentioned in the said record. There is no dispute that alongwith the notice dated 03.05.2017, the land owner had submitted relevant 7/12 extracts for consideration. Coming to the contention that such purchase notice ought to have been issued by the person interested and not by his counsel by placing reliance on the decision in *Perfect Machine Tools Company Limited* (supra) [*High Court*], it is seen that this decision has been reversed by the Hon'ble Supreme Court in *Perfect Machine Tools Company Limited* (supra) [*Supreme Court*].

7. Consequently we find that all legal requirements that have to be complied with for seeking benefit of the deeming fiction under Section 49(7) as well as for seeking lapsing of the reservation under Section 127 of the Act of 1966 have been fulfilled. The petitioner is thus entitled for the relief of the declaration that Reservation No.94 with regard to Survey No.12/1 of Village Kaulkhed in respect of land admeasuring ~~1-H-41-R~~ 1 Hectare 41.88 Ares has lapsed under Section 127 of the Act of 1966. We declare accordingly.

Consequently, the respondent no.1 shall issue notification in that regard within a period of eight weeks from the service of copy of this order on it. It is

further declared that the petitioner is entitled to develop the land mentioned above in the manner as is permissible in the case of adjacent land under the relevant plan.

Corrected as
per Hon'ble
Court's order
dated
07.01.2022

Rule is made absolute in aforesaid terms with **no** order as to costs.

(G.A.SANAP, J.)

(A.S.CHANDURKAR, J.)

Andurkar..